

FREDERICK SIEMON

IBLA 83-865

Decided April 25, 1985

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting application for recordable disclaimer of interest in lands. CA 6688.

Affirmed.

1. Act of July 6, 1960--Administrative Authority: Generally--Board of Land Appeals--Constitutional Law: Generally

While it is within the province of the judicial branch to adjudicate the constitutionality of statutes, it is outside the jurisdiction of the Board. The legislative history of the Act of July 6, 1960, 74 Stat. 334 (Sisk Act) shows Congress fully considered the constitutionality of the compensation provisions therein. The Department is bound to follow those provisions.

2. Act of July 6, 1960--Conveyances: Generally--Lieu Selections-- Statutory Construction: Legislative History

The legislative history of the Act of July 6, 1960, clearly shows that Congress concluded that the Federal Government holds title to land relinquished to the Federal Government in anticipation of a forest lieu exchange, notwithstanding the failure to consummate the exchange.

3. Act of June 4, 1897--Act of July 6, 1960--Act of October 21, 1976--Conveyances: Generally--Lieu Selections

An application for a recordable disclaimer of the Government's interest in a parcel of land in the Los Padres National Forest (formerly, Pine Mountain and Zaca Lake Forest Reserve) pursuant to sec. 315 of the Federal Land Policy and Management Act of 1976, which parcel was deeded to the Government in 1901 in

contemplation of selecting another parcel in lieu thereof pursuant to the Act of June 4, 1897, is properly rejected even though the lieu selection was never consummated, because the Act of July 6, 1960, quieted title to such land in the United States as part of the national forest in which the lands are located.

APPEARANCES: Bennett Siemon, Esq., Bakersfield, California, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Frederick Siemon has appealed from a July 13, 1983, decision of the California State Office, Bureau of Land Management (BLM), rejecting his application for a recordable disclaimer of interest in lands.

On December 13, 1979, appellant filed his application for a disclaimer (quitclaim deed) under section 315 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1745 (1982), describing the following land located in the Los Padres National Forest (formerly known as the Pine Mountain and Zaca Lake Forest Reserve): S 1/2 N 1/2 SE 1/4 sec. 23 and S 1/2 N 1/2 SW 1/4 sec. 24, T. 5 N. R. 24 W., San Bernardino Meridian, Ventura County, California.

This land was patented to Joseph J. Rapp on March 27, 1901. On September 30, 1901, Rapp quitclaimed the land to the United States. On January 24, 1902, Rapp filed a lieu selection, as was then permitted by the Forest Exchange Act of June 4, 1897 (30 Stat. 11, 36), for certain land outside the forest reserve that was under the management of the General Land Office, Coeur d'Alene, Idaho. Rapp's application was rejected.

Appellant herein is Rapp's successor in interest. On October 10, 1969, appellant filed an application for a quitclaim deed pursuant to section 6 of the Act of April 28, 1930. 43 U.S.C. § 872 (1982). By decision of August 18, 1970, BLM disallowed appellant's application on the ground that the Act of July 6, 1960, P.L. 86-596, 74 Stat. 334 (Sisk Act) had removed the authority of the Department of the Interior to grant an application under the Act of April 28, 1930, for reconveyance of land which had been conveyed to the United States as the basis for an uncompleted forest lieu selection. <sup>1/</sup> This BLM decision was affirmed by the Board in Frederick Siemon, 6 IBLA 156 (1970).

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<sup>1/</sup> Section 1 of the Act of July 6, 1960, applied to "the claim of any person who relinquished or conveyed lands to the United States as a basis for a lieu selection" in accordance with the Act of June 4, 1897, as amended by the Acts of June 6, 1900 (31 Stat. 588, 614), Mar. 3, 1901 (31 Stat. 1010, 1037), Mar. 3, 1905 (33 Stat. 1264), and Sept. 22, 1922 (42 Stat. 1067), and who had not received his lieu selection, a reconveyance of his lands, or the authority to cut and remove timber. Upon application to the Department of the Interior within one year from the date of the Act, each such person holding a valid claim was entitled to receive from the United States as compensation for the lands conveyed the sum of \$ 1.25 per acre, with interest thereon

In BLM's decision now before us, the agency held that the Act of July 6, 1960, "quieted title to the above-described land to the United States." BLM rejected the application as filed under FLPMA because record interest in the land was still in the United States.

Appellant argues that the relinquishment (quitclaim deed) from Rapp to the United States did not vest legal or equitable title in the Government; that the Sisk Act is unconstitutional and cannot "quiet title" to property; and that title was not forfeited by failure to apply for relief under the Act of September 22, 1922, 42 Stat. 1017, or the Act of April 28, 1930, 46 Stat. 257, supra.

All of these arguments were recently considered and answered in Andy D. Rutledge, 82 IBLA 89 (1984), in which counsel herein represented the appellant. The pertinent holdings in that case, which are applicable here, are summarized as follows.

[1] The constitutionality of the Sisk Act, or any statute, is outside the jurisdiction of this Board to adjudicate. Unless and until an Act of Congress is declared unconstitutional by a court of competent jurisdiction, the Board is bound to follow its provisions. O. J. Shaw, 75 IBLA 396 (1983); Soda Flat Co., 75 IBLA 388 (1983); Masonic Homes of California, 70 IBLA 46 (1983). The legislative history of the Sisk Act shows that Congress fully considered the constitutionality of the compensation provisions of the Sisk Act. O. J. Shaw, supra.

[2] The legislative history of the Sisk Act, as well as section 4 of the Act, demonstrate that relinquished land is vested in the Federal Government notwithstanding the failure of the parties to consummate a forest lieu exchange. See generally, State of Oregon, I, 78 IBLA 255, 278-84, 91 I.D. 14, 27-30, appeal pending, State of Oregon v. Bureau of Land Management, U.S.D.C., D. Ore. Civ. No. 85-646, filed Apr. 12, 1985. Relinquished property such as the subject land is therefore United States property. (See S. Rep. No. 1639, 86th Cong., 2d Sess. 4 (1960); Section 4 of the Act of July 6, 1960; 74 Stat. 335).

[3] Under section 315 of FLPMA, 43 U.S.C. § 1745 (1982), the Secretary may issue a disclaimer of interest in any lands where "the disclaimer will help remove a cloud on the title of such lands and where he determines a record interest of the United States in lands has terminated by operation of law, or is otherwise invalid."

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fn. 1 (continued)

at 4 percent per annum, "from the date on which application was last made from said person for a lieu selection, for reconveyance, or for authority to cut and remove timber or, if no such application has been made, from the date of this Act."

Section 3 of the Act provided:

"The Act of September 22, 1922 (42 Stat. 1017; 16 U.S.C. 483) is hereby repealed. No reconveyance of lands to which section 1 of this Act applies shall hereafter be made under section 6 of the Act of April 28, 1930 (46 Stat. 257; 43 U.S.C. 872)."

For the foregoing reasons, the Board concludes, as it did in Rutledge that title to the lands in question vested in the United States. Therefore, BLM properly denied appellant's application for a recordable disclaimer.

Appellant has requested a hearing pursuant to 43 CFR 4.415. An evidentiary hearing before an Administrative Law Judge is appropriate only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required. Rutledge, supra. The Board denies appellant's request for a hearing because there are no material issues of fact requiring resolution.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Wm. Philip Horton  
Chief Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge.

